

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

|  |   |                    |
|--|---|--------------------|
| <b>B. JUNE PALMER</b>                    | ) |                    |
| Claimant                                 | ) |                    |
| VS.                                      | ) |                    |
|  | ) |                    |
| <b>DCCCA</b>                             | ) | Docket No. 248,202 |
| Respondent                               | ) |                    |
| AND                                      | ) |                    |
|  | ) |                    |
| <b>HARTFORD ACCIDENT &amp; INDEMNITY</b> | ) |                    |
| Insurance Carrier                        | ) |                    |

**ORDER**

Respondent and its insurance carrier appealed the March 26, 2002 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

**ISSUES**

This is a claim for an April 1, 1999 accident, which allegedly resulted in bilateral carpal tunnel syndrome and injury to the right thumb. The respondent and its insurance carrier deny that the bilateral carpal tunnel syndrome, or the present need for surgery, is related to the accident.

Judge Clark held a preliminary hearing on March 26, 2002. On that same date, the Judge issued an Order in which he authorized Dr. J. Mark Melhorn to treat both of claimant's arms.

Respondent and its insurance carrier contend Judge Clark erred. They argue the evidence fails to establish that claimant's bilateral carpal tunnel syndrome or the present need for surgery is related to her work. Accordingly, they request the Board to limit claimant's medical treatment under this claim to her right thumb only.

Conversely, claimant argues the issue whether claimant's bilateral carpal tunnel syndrome was caused by the April 1, 1999 accident and subsequent compensatory overuse is an issue that is not subject to Board review from a preliminary hearing order.

Claimant contends that issue is one of nature and extent of injury, which is not a jurisdictional issue under K.S.A. 1998 Supp. 44-534a. Accordingly, claimant argues the appeal should be dismissed. In the alternative, claimant argues the record supports Judge Clark's findings and, therefore, the Order should be affirmed.

The issues before the Board on this appeal are:

1. Does the Board have jurisdiction to review a preliminary hearing issue of whether an injured worker developed carpal tunnel syndrome due to the alleged combined effects of a compensable accident and compensatory overuse?
2. If so, is claimant entitled to receive medical treatment for her bilateral carpal tunnel syndrome?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Board finds and concludes:

The preliminary hearing Order should be affirmed.

The issue of whether a worker's injury (in this instance bilateral carpal tunnel syndrome) arose out of and in the course of employment is specifically designated as an issue that is subject to Board review following a preliminary hearing order. K.S.A. 1998 Supp. 44-534a addresses the Board's jurisdiction when reviewing preliminary hearing orders and provides, in part:

A finding with regard to a disputed issue of whether the employee suffered an accidental injury, **whether the injury arose out of and in the course of the employee's employment**, whether notice is given or claim timely made, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board.  
... (Emphasis added.)

The Judge implicitly found that claimant's bilateral carpal tunnel syndrome was directly related to her April 1, 1999 accident when she fell while climbing a staircase and injured her right thumb.

The Board finds and concludes at this stage of the proceedings that it is more probably true than not that the April 1, 1999 fall either caused or aggravated a preexisting carpal tunnel condition in claimant's right upper extremity and that claimant then developed left carpal tunnel syndrome compensating for the right arm injury. In reaching that conclusion, the Board is persuaded by claimant's testimony about her progressively

worsening symptoms following the April 1999 accident and how she began using her left hand to protect her right.

The Board has also considered the medical opinion provided by Dr. C. Reiff Brown, whom claimant hired to provide an opinion in this claim. In a March 11, 2002 letter to claimant's attorney, Dr. Brown wrote, in part:

In my opinion this lady has had an excellent result from the carpal/metacarpal fusion of the right thumb. She has ongoing carpal tunnel syndrome bilaterally and in my opinion, with reasonable medical certainty, that a carpal tunnel problem was made symptomatic and progressive by the April 01, 1999 injury. I can also say that based on the subjective history of marked increase in symptoms in the overuse category that the April 1999 injury has brought about increasing symptoms on the left. In my opinion this patient is at maximum medical benefit unless she undergoes surgical treatment for her carpal tunnel problem. . . .

The Board notes that Dr. J. Mark Melhorn testified at his deposition that it was not probable that claimant's April 1999 fall caused either the left or right carpal tunnel problems, but he was under the impression that claimant did not have any carpal tunnel symptoms until February 2000. On cross-examination, however, claimant's attorney presented the doctor with medical records that indicated claimant was having symptoms associated with carpal tunnel syndrome as early as August 1999. Dr. Melhorn then indicated that information increased the likelihood that claimant had some preexisting carpal tunnel that may have been aggravated, perhaps only temporarily, by the April 1999 fall. The doctor also indicated some of his opinions were based on the mistaken assumption that claimant was not seeking medical treatment during certain periods. The doctor testified, in part:

Well, given the additional clarification that you previously provided or have currently provided me and the information I have I believe that it is reasonable to assume that this individual had a subclinical carpal tunnel prior to the traumatic event and fall, that she also had a pre-existing osteoarthritic pattern with regard to the right thumb. It would appear that the fall with regard to the right definitely aggravated the osteoarthritic component and now with the additional clarification and the insight that I did not have before as to why she was not seeking treatment in that time period, **I believe that probably she did aggravate the pre-existing carpal tunnel component with regard to the right.**<sup>1</sup> (Emphasis added.)

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<sup>1</sup> Deposition of Dr. J. Mark Melhorn, February 14, 2002; at pages 31 and 32.

On redirect examination, Dr. Melhorn again changed his opinion and stated that the probability was less than 51 percent that the April 1999 fall aggravated the right carpal tunnel syndrome.

The Board also notes Dr. Melhorn testified that claimant's carpal tunnel symptoms may have been aggravated by any work activities which she has been performing since leaving respondent's employment, but the doctor completely discounted the possibility that claimant developed left carpal tunnel syndrome due to favoring the injured right upper extremity. The doctor does not explain how those later work activities potentially aggravated claimant's carpal tunnel syndrome but overusing the left upper extremity would not.

When considering the record compiled to date, the Board concludes the greater weight of the evidence establishes that claimant's bilateral carpal tunnel syndrome is directly related to her April 1, 1999 work-related accident. Accordingly, claimant is entitled to receive medical treatment under the Workers Compensation Act for those injuries.

As provided by the Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.<sup>2</sup>

**WHEREFORE**, the Board affirms the March 26, 2002 preliminary hearing Order entered by Judge Clark.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 2002.

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BOARD MEMBER

c: Orvel Mason, Attorney for Claimant  
Gary K. Albin, Attorney for Respondent and its Insurance Carrier  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director

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<sup>2</sup> K.S.A. 1998 Supp. 44-534a.